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EXAMINER

PALO, FRANCIS T

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Amendment / Arguments (Request for Reconsideration)

Applicant's arguments filed 2/19/08 have been fully considered but they are not persuasive.

The examiner maintains that a *prima facie* case of obviousness has been shown by the office, in that Veronesi '387 teaches a plant cultivation system comprising a water insoluble polymer, specifically poly(ethylene oxide), which is placed close to the roots of plants growing in pots or containers, and that Anderson '834 teaches a moisture-absorbing polymer can "simply be dumped or otherwise deposited in the hole in which the seed or seedling is to be planted, preferably, however in reforestation and similar applications, these components are packaged in a container that is designed to be planted with the seedling in a porous sealed conformable bag-like enclosure".

Anderson is analogous art, and in teaching depositing hydrophilic gels (as does Veronesi) directly in the hole further provides the motivation for enclosing the gel(s) in a porous bag as claimed.

It is respectfully maintained that the combination of Veronesi and Anderson is proper, as where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

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Accordingly, applicants claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Accordingly, since the applicants have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Further, the incorporation of previously rejected claim-4 does not place the independent claim in condition for allowance, as the product-by-process recitation does not serve to distinguish the water insoluble polymer as taught by Veronesi from the prior art; and finally, the introduction of new claims 27-32 would require further search and/or consideration.

/Francis T. Palo/

Primary Examiner, Art Unit 3644

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